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OBSERVATIONS

OCCASIONED BY THE

CONTEST

ABOUT

LITERARY PROPERTY.



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OBSEVATION

CONFIDENTIAL



PROPERTY

THE
BRITISH MUSEUM
LONDON

OBSERVATIONS, &c.

AS a dispute concerning Literary Property, carried on at different times, has of late been renewed with more than ordinary vigour, the Author of the following Observations was induced to state a few Facts relative to it, some of which formerly fell under his proper notice ; and if, in endeavouring to do justice to the subject, he has been obliged to descend to some disagreeable instances of unfair dealing, it is hoped that less offence will be taken, on his declaring once for all, that this is done in a manner wholly disinterested, and with the strictest guard against any partial aggravation or misrepresentation whatsoever.

To begin with a short view of some Statutes made for the advancement of Learning, and the particular benefit of
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such Societies and Repositories, as are in a more eminent degree destined to support it; with regard to which Societies chiefly these Statutes come at present under consideration.

1. By an Act, 17 *Char.* 2. c. 4. every Printer is required to deliver three copies of the best and largest Paper of each Book printed by him before it is vended, to the Master of the company of Stationers, for the use of the King's Library, and the two Universities, under the penalty of forfeiting — the sum of five pounds for each copy not so delivered, as also the value of the said copies. While this act subsisted, several Books were delivered for the use of the King's Library, ^a and the said Universities.

2. In

^a Dr. Bentley, keeper of the King's Library, 1694, says, That upon application to the Master of the Stationers Company, he procured near a thousand Volumes to be sent into it, that were due from Booksellers; though it appears that even then some of them absolutely declined complying with that Act: one B. in particular declaring, That *he knew not what right the Parliament had to give away any man's property; — that*

2. In another, 8 *Ann. c. 19. § 5.* entitled, *An Act for the encouragement of Learning by vesting the copies of printed Books in the Authors, &c.* to the three copies were added six more, viz. one to the Library of Sion College, one to that belonging to the Faculty of Advocates in *Edinburgh*, and one to each of the four Universities in *Scotland*; to be delivered on the same Penalties; and Prosecution to commence *within three months.*

Under this latter Act very few books of value have been obtained, the Booksellers being determined not to lose so many Copies of the largest Paper, as this Act requires to be delivered, and chusing rather to forfeit all the benefit of it, and trust one another, by never entering their Books in the Register of the Stationers-Hall; or when this method is not safe enough, entering only one Volume of each

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fett;

he hoped the Company of Stationers would refuse, and try it at Law; — that they were a Body, and had a common Purse, &c. Pref. to Bentley's Diff. on *Phalaris* p. 30, 31.

sett; that being deemed effectual to prevent any others of the trade from printing such sett upon them. And thus, when complete setts of works have been claimed for any of the aforesaid Libraries, or even offers made to purchase the remaining Volumes not entered as the Acts direct, the Bookseller has not only refused to part with them gratis, but even to sell the remaining Volumes to such claimants, unless those other Volumes, that had been delivered, were likewise paid for at the same time. ^b

3. Should a Prosecution be undertaken for the small Penalties appointed by these Acts, since the Clerk of the Stationers Company to whom application is made, only gives in his Accounts quarterly at the soonest, the Time fixed for commencing such Prosecution must elapse before the University, &c. can regularly make their

^b This was the precise answer given to an Agent from the University of *Cambridge* by that very person who commenced the late Prosecution against some Printers in *Scotland*, viz. *Millar*, on his having published the last volume of the *Court of Augustus*.

their demand, and receive notice, whether it will be complied with or not; by which means the several Societies entitled to such a number of Books, are in a great measure deprived of the benefit intended for them by these Acts. ^c

4. This has long been the fate of the University of *Cambridge* in particular, which has made frequent enquiries into the Affair, and which (ever actuated by a true zeal for promoting every branch of

^c The furnishing publick Libraries with all new Books seems to be more effectually provided for in some other Countries. In *France* every publisher of a new work who is entitled to an exclusive property by the *Privilege du Roi*, is at the same time obliged to deliver two Copies into the King's publick Library, one into that of the *Louvre*, one into that of the Chancellor of France, and one into that of the Keeper of the Seals. — But there is less occasion to dwell longer on this subject, or enter deeply into that other which is closely connected with it, viz. the state of *Literary Property* here, or in other Nations, at present, or about the time when printing became general; since so full a History of these points, as well as of the Act in 8 *Ann.* together with the several proceedings on that Act, is given in a late Pamphlet, entitled, *Considerations on the Nature and Origin of Literary Property.* *Edinburgh* printed 1767.

of Literature) endeavoured some time ago to reduce the exorbitant price of Law Books, by causing one small Volume to be printed under their License, in order to assert the privilege of printing *all kinds of Books*, granted to them by their Charter; which Grant they were given to understand would in this case be contested; as in truth it was; ^d but having supported it at a large expence, in a tedious litigation with the Law Patentees, and at length gain'd their cause, they published a cheap sett of the Statutes, with the same laudable intent, as they likewise had undertaken, and at first with no small hazard, the printing of Bibles.

5. Let it be farther observed, that in the argument drawn from these Acts in favour of a permanent Literary Property, the benefit of either Author or Reader seems not to be really consulted so much as that of a few Booksellers; who, 'tis apprehended, have been in no small degree
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^d A full Report of this may be seen in Dr. Burn's Eccl. Law, under Colleges.

oppressive toward them both, by combining against the circulation of all copies that are not placed under their immediate protection, or the sale of which may prove detrimental to such as have come already into their possession; and when they are willing to undertake or assist in some new publication, have been known to exact no less than 28 per cent. for such assistance, * beside other advantages accruing to them from several articles in trade too notorious to need specifying; not to mention divers impositions in the various materials; together with some Obstructions from other Quarters; particularly the withholding a *draw-back* on the duty of paper, which by another Act, 10 *Ann.* c. 19. § 63. is allowed for all books printed in Latin, Greek, Oriental or Northern languages at either University. And this last Act is thought

* N. B. The Booksellers have always 28 per cent. for such pieces as they call *Pamphlets*; and of this sort they reckon all from 6*d* to 2*s* price. How much higher they extend the notion of a Pamphlet, I do not know. For a book of 5*s* they have usually 15 per cent.

thought of consequence enough to be still publickly commemorated, at least in one of our Universities, though the respective Editors are very seldom able to reap any advantage from it.

6. By these means an author, if he could get ever so fair and early account of the net produce to be shared with his bookseller, after an edition is all sold off, (according to the usual agreement made between them,) rarely is allowed the third part of such clear profit, when it does come in. Or if, rather than wait this event, he for obvious reasons is desirous of parting with his copy outright, which is no uncommon case; he is forced to do this for a trifle, on pretence of the great hazard to be run in the disposal of it: which though sometimes just enough, yet is too often merely a pretence in the fraternity to make an unreasonable Property of the unskilful and unwary, or the necessitous author, who lies at their mercy. [§]

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[§] This, I have been told, was the case of Dr. *Whitby*, with regard to his *Comment*; he was forced to trudge

7. I would not appear altogether insensible of the benefit which such an useful Body of men may, and often do confer upon the public, by contributing to bring works of great length and difficulty to light, the expence of which could not be so easily, if at all, supported by the authors themselves, or their friends: much less would I be understood to insinuate, that there are no exceptions to the way of dealing above described between Authors and their Booksellers; some of the former may probably now and then drive a hard bargain with the latter; and others, or their Heirs, may receive some considerable gratuity from them on the uncommon success of a work; ^h but these are most extraordinary instances of Generosity, and the general treatment is far otherwise. On which account it was

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about the town, tendering his copy to most of the principal booksellers; but received the same answer from them all; the price having been settled before among themselves in one of what they call their *Congers*.

^h Such was the polite behaviour of the Proprietors of Dean *Prideaux's Connection*; which deserves to be mentioned to their honour, and is here remark'd with pleasure.

judged expedient, some years ago, to attempt the Emancipation of Authors, by instituting a certain *literary Society* for their relief; to print and circulate such works as were approved, at a public expence, and when the necessary charges were deducted, return them the remaining profit of the edition with all convenient dispatch; and a few Books were actually published on that footing. But this good design soon failed; probably on finding, that these books could no more be circulated without the usual concessions to the Trade, than others that come forth by *Subscription*, or *for the benefit of the Author*; which are commonly stifled in the birth, or make their way into the world under no small difficulties and delays.

8. When at this cheap rate the London Booksellers have got copies into their hands, instead of presenting them to the public at a price in any respect proportionable, how often do they either keep them

them up to enhance the value, (since the settling of prices by Authority has been dropt) or continue to exhibit them in such a fashionable, expensive dress, as makes them come three times dearer than they might have been afforded? which renders a republication of them in some more frugal and commodious form, in other parts of his Majesty's Dominions, highly beneficial to the Community; if they could as easily be introduced amongst us.

9. But here again, a considerable number of London Booksellers have been extremely active to get all such suppressed, by a late Confederacy; binding themselves not to keep in their shops any English Books whatsoever that had been reprinted in *Scotland*, under the heaviest of Penalties; and raising a large fund for the employment of proper persons to search out or seize all of them, that were in sale amongst us.

10. With the same view of securing an
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immoderate gain by ingrossment, have the same persons occupied several Classic, or capital writers in our Language, ancient and modern; for the Copies whereof, 'tis justly presumed, that neither they nor their predecessors paid any valuable consideration at all; and consequently can plead no more right to an exclusive negotiation with them, than they can have in the bare text of other *Classics*, *Greek* or *Latin*. But having once got these into their possession (and there is scarce one of them worth occupying, that is not thus forestall'd,) they adhere to this right of occupancy, or rather usurpation, very strictly; carefully secrete them from common use, and traffick with them among some of the combination everlastingly; to the no small detriment of the commonwealth of letters, which is hereby deprived of all the benefits arising from that grand source of Improvement, the emulation of various artizans; who would constantly be striving to surpass each other in the usefulness, elegance and cheapness of
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such works, had they all an equal, uncontested right to the fabrication and disposal of them. Whereas, if these private and perpetual titles should prevail, instead of aiming at improvements, many of the most industrious, and fairest traders must be distressed, for want of business sufficient to maintain themselves and their families.

11. The Act of 8 *Ann.* vesting copies of printed books in the Authors, &c. which has of late occasioned so many doubts and difficulties, is particularly favourable to Authors of *Books*, by freeing them from the charge and trouble of procuring fresh Patents on every new publication (as the case was before with them, and remains yet with regard to other *useful Inventions*) and is justly stiled a *standing universal Patent*, giving them the *sole right* in all their books then published for twenty one years; in all others hereafter to be published, for the term of fourteen years, and *no longer*; yet *returning to them* for *other* fourteen, if the Authors shall survive
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the first; the Legislature having esteemed these terms of years to be an ample compensation for all the interest they could be supposed to have in such Books; and by all common rules of construction, intending that the Copy-right hereby conveyed should cease again at the end of the latter Term, as well as of the former.

12. The present Act then appears to be neither *accumulative* nor *restrictive* of any antecedent right properly so called; but rather *creative* of a full, clear one for a determinate time, and under certain Conditions; and if these were duly observed, they might tend as much to the *encouragement of Learning*, as the advancing any independent inextinguishable Property in such Copies would prove pernicious and destructive to it.

13. Nor can the contrary notion, I apprehend, be collected from the *Preamble* of this same Act, which, together with *Authors*, joins *Proprietors*; meaning those
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persons, who either purchased of them the whole work on a presumption of being able to obtain the necessary protection for it, or by joining with them in the expence of such publication, had equal reason to expect their share of the like recompence, or at least indemnity from the Public. But such a vague imperfect right as this, seems incapable of ever being legally ascertained, any more than the exact bounds of *Gratitude* can be defined, or proper *Damages* fixed for the violation of it.

14. The case in short seems to stand thus. A Proprietor bought up an Impression, expecting that it would for some considerable time keep to the same price that it bore at the time of publication. On the first appearance of the contrary, from any other impression being carried on without his consent, he might formerly have had a particular Patent, and now enjoys the benefit of a general one, to prevent such impression from being here
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vended to his prejudice; which moreover entitles him to the forfeiture of all *such Books as are exposed to sale, and every sheet thereof*; and further orders, that every offender shall forfeit one penny for every sheet which shall be found printed or printing, published or exposed to sale, one moiety thereof to the Crown, the other to any person who shall sue for the same; (though I believe that Clause was seldom or never put in force, probably from the smallness of the forfeiture:) and if the original Proprietor, or those to whom his Property is transfer'd, do not think it worth their while to take the benefit of these privileges and protections; they have no more room to complain that their Impression is injured by a better taking place, than they can have to prosecute another person for writing on the same subject in a so much superior way, as will reduce their own work to waste Paper.

15. If it be said, that this supposed inherent Property must be of lasting benefit

fit to Authors; who might dispose of their Copies to Booksellers upon better terms, if their own right in them were allowed to be perpetual. I answer: if the sole right for fourteen, or twice fourteen years, during which a new Book has its chief run, be not deemed sufficient to reimburse the purchaser, I doubt whether he is like to get much more by such imagined Perpetuity; or consequently, will bid more for the Copy on that account. But if the Book have really so good a run, as to keep its original price during all that term; surely, some time before its expiration, the Proprietor may, and ought to present the public with it in a cheaper form; ⁱ and thereby will guard effectually

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ⁱ Why upon an Impression of every popular Book in a pompous Folio or Quarto, there is not at the same time worked off as neat an Edition in Octavo; which may be done without composing it anew, at little more expence than that of Paper, the same Types remaining; only the size of Pages being altered, by a method not perhaps commonly known, termed among Printers *over-running*, and which was lately executed in the greatest part of Dr. Taylor's *Demosthenes*; — why publishers of very saleable Books do not make use of such a method more frequently, to accommo-

against the danger from invaders, without being farther armed with an endless power of prosecuting such ideal Copy-rights; the natural effect of establishing which power, and entrusting it in such hands, may, perhaps, appear sufficiently from some parts of their management already pointed out.

16. Nor can any thing be inferr'd from that *Proviso* in the conclusion of the same Act, viz. That it *do not extend either to prejudice or confirm any right that the said Universities, or any person or persons have, or claim to have to the printing or reprinting any Books, &c.* as appears sufficiently by its connecting all the rights of such persons with those of the *Universities*; i. e. Rights not merely *natural*, but entirely founded upon *Statute* or *Charter*.

17. But what sense soever this Act may
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date the Public with them at an easy rate, is not, I fear, so easily accounted for on any Principles that will be owned.

be capable of, one would rather wish and hope for an explanation or amendment of it, than allow such Interpretations to take place, as leave room for all the abuses abovementioned, and all the vexatious Law-suits that will of course arise from them; to countenance which abuses, a Bill was preferr'd about thirty years ago, and rejected.^k Neither does it yet appear, why the permitting of the Books in question to be imported under proper regulations, should be deemed an undue encouragement of a *Piratical* Commerce, rather than a prudent precaution against injurious *Monopolies*: for in that light several of the above practices will undoubtedly be considered, notwithstanding all the Arts used to palliate and disguise them.

18. Upon the whole; though it must be confessed, that the reprinting some
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^k ' I have sent you the Copy of a Bill now depending in our House for the *Encouragement of Learning* (as the Title bears) but I think it is rather of advantage to Booksellers than Authors.' Mr. *Pulteney's* Letter to Dr. *Swift*. April the 29th, 1735.

large works in a more convenient form, without the consent of the original Author or his Assigns, may now and then fall heavy on them, notwithstanding all the Remedies hitherto provided; yet there does not seem ground sufficient to believe, that upon an impartial balancing of consequences on each side, those inconveniences, either to the Community or to Individuals, which are apprehended from the former, will prove in any respect so great and general, as these that are seen, and felt very sensibly, to attend the latter.

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